



DEPARTMENT OF THE NAVY

COMMANDER
U.S. FLEET FORCES COMMAND
1562 MITSCHER AVENUE SUITE 250
NORFOLK, VA 23551-2487

5720

N01P (2014-32-007873)/017
September 9, 2014

Ms. Kim Wigington
(b)(6)

Dear Ms. Wigington:

This letter responds to your Freedom of Information Act (FOIA) request of June 28, 2011 wherein you requested (1) a copy of the Pre-Release Environmental Assessment (EA) for Fleet Support and Infrastructure Improvements related to the Introduction of the F/A-18E/F Super Hornet; and (2) all documents and other information generated or gathered by the Department of Defense Inspector General (DODIG) inquiry, and by agencies that reported to the DODIG relating to case #105900 and #113851, regarding the Environmental Assessment of the Introduction of the F/A-18E/F Super Hornet to Naval Air Station, Key West.

Your original request was sent to Commander, Navy Facilities Engineering Command, Navy Region Southeast. Commander, Navy Region Southeast (CNRSE) responded to this request on October 31, 2011 by denying the first part of your request and forwarding the second part of your request to the DOD Inspector General for a direct response to you. The denial of the Pre-Release EA was premised on applying the portion of the FOIA that exempts disclosure of internal government communications that are part of the deliberative process, 5 U.S.C. §552(b)(5), commonly referred to as exemption (b)(5).

On November 28, 2011, you appealed this denial to the Office of the Judge Advocate General (General Litigation) (OGC). On January 3, 2012, that office granted your appeal in part and directed CNRSE to reasonably determine whether information could be segregated and released from the responsive document which was otherwise withheld under exemption (b)(5). On 6 May 2014, CNRSE again denied your request in full, finding that the disclosure of any portion of the Pre-Release EA would reasonably cause foreseeable harm to the deliberative process privilege protected by exemption (b)(5).

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You appealed this decision on June 12, 2014, to the OGC noting that the Pre-Release EA was sent to at least eleven public agencies, including several regulatory agencies from the State of Florida. While considering that appeal, it was realized that the document you requested would have originated from Commander, U.S. Fleet Forces Command (USFF) and your request was therefore forwarded to this command on July 21, 2014.

Your request was processed under applicable provisions of the FOIA statute, as amended, and the implementing Navy Department directive (SECNAVINST 5720.42F). As you allude in your June 12, 2014 appeal, while the Department of the Navy produces multiple draft documents for internal review, you are seeking the Pre-Release draft EA that was prepared to be shared with public agencies. The document that was previously identified as responsive to your original request, however, is a draft document that was prepared *after* the Pre-Release Draft EA. This document is an internal government communication that is part of the deliberative process.

Secretary of the Navy Instruction M-5210.1 provides specific guidance on the retention and/or destruction of all official records. Most records are destroyed after three years, unless otherwise required by law to be retained. Although the record you seek would be almost twelve years old as of this date, in accordance with the Department of the Navy's FOIA regulations, a thorough and diligent search was conducted of the paper and electronic records held by USFF and CNRSE and no responsive records were found.

Because you have received a "no records" response, you may appeal this determination by writing to:

Office of the General Counsel
Department of the Navy
ATTN: FOIA Appeals
1000 Navy Pentagon, Room 5A532
Washington, DC 20350-1000

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Your appeal must be received within sixty (60) calendar days from the date of this letter. A copy of your initial request and this response letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION ACT APPEAL" both on the envelope and the face of the letter and should contain a brief statement of the reasons you believe this decision to be in error.

I am the official responsible for this determination. Please contact Ms. Linda Alvers at (757)836-3630, or at linda.alvers@navy.mil if you require further assistance regarding this action.

Sincerely,


J. E. CAMPBELL
By direction

Copy to:
USFF N01L
CNRSE
Serial File
Case File